

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**ERIC J. "EJ" DALIUS, et al.**

**Defendants.**

**MB HOMES LLC, et al.**

**Relief Defendants.**

Case No. 2:18-cv-08497-CJC-E

**~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER**

1 Pursuant to the provisions of Federal Rule of Civil Procedure 26(c), the Court  
2 enters this stipulated Protective Order for the purpose of assuring the confidentiality  
3 of certain information that will be disclosed in the course of the litigation.

4 1. As used in this Protective Order, the term "Sensitive Personal  
5 Information" shall mean any documents or other information containing  
6 any one or more of the following categories of personal and private  
7 documents or information: (a) a Social Security or tax identification  
8 number; (b) individuals' financial account statements, including  
9 statements for any bank account, credit card account, brokerage account,  
10 mortgage, student loan, or other loan; (c) any financial account number,  
11 including for a bank account, credit card account, brokerage account,  
12 mortgage, student loan, or other loan; (d) tax returns; (e) the home  
13 address and phone number of any individual person; (f) the birth date of  
14 any individual person; (g) the name of any individual person who, at the  
15 time of the filing of the Complaint in this action, was known to be less  
16 than 18 years old; or (h) medical information.

17 2. Sensitive Personal Information disclosed to any party to this action or  
18 their/its counsel (collectively, the "Parties") during the course of this  
19 action:

- 20 a. Shall be used by the Parties only for the purposes of this action;  
21 b. Shall not be used by the Parties for any business or commercial  
22 purposes;  
23 c. Shall not be published to the public in any form by the Parties  
24 except as permitted by Paragraphs 5 and 7, below;  
25 d. May be disclosed only to the following persons, with reasonable  
26 precautions taken to insure the confidentiality of the information:  
27 i. A Party;  
28 ii. Employees or contractors of any law firm that represents a

1 Party, including attorneys as well as secretarial, clerical,  
2 paralegal, legal, or student personnel and any person or  
3 entity with whom a Party contracts to reproduce or manage  
4 documents;

5 iii. Non-party witnesses;

6 iv. A document's author(s), recipient(s), or copyee(s);

7 v. Current and former employees of the producing Party or  
8 non-party;

9 vi. Independent (non-employee) consultants, expert witnesses,  
10 or advisors retained by any of the Parties in connection with  
11 this action or the Criminal Action;

12 vii. Court reporters or stenographers engaged to record  
13 deposition, hearing, or trial testimony, and their employees;

14 viii. Such other persons as hereafter may be authorized by either  
15 (1) written consent of all the Parties, (2) the original  
16 producing Party or non-party, or (3) the Court upon motion  
17 of either Party.

18 3. A copy of this Protective Order shall be delivered to each of the named  
19 Parties or persons within paragraph 2.d. above to whom a disclosure of  
20 Sensitive Personal Information is made, at or before the time of  
21 disclosure, by the Party making the disclosure. The provisions of this  
22 Confidentiality Order shall be binding upon each such Party or person to  
23 whom disclosure is made.

24 4. The provisions of this Protective Order shall not be construed as  
25 preventing:

26 a. Any disclosure of Sensitive Personal Information to any Party;

27 b. Any disclosure of Sensitive Personal Information to any judge,  
28 magistrate, or employee of this Court for any purposes of this

1                   action;

2           c.     Any disclosure of Sensitive Personal Information for the purpose  
3                   of enforcement of the criminal law or as otherwise required by  
4                   law.

5       5.     All Sensitive Personal Information that is filed with the Court shall be  
6             redacted in accordance with Federal Rule of Civil Procedure 5.2(a).

7       6.     This Protective Order shall not:

8           a.     Operate as an admission by any Party that any particular discovery  
9                   material contains Sensitive Personal Information;

10          b.     Prejudice in any way the right of a Party to seek a Court  
11                 determination of whether such material should be subject to the  
12                 terms of this Confidentiality Order;

13          c.     Prevent a Party or non-party's disclosure of its own Sensitive  
14                 Personal Information; or

15          d.     Prejudice in any way the right of any Party to apply to the Court  
16                 for a further protective order relating to any other confidential  
17                 information or Sensitive Personal Information.

18       7.     Nothing in this Order shall preclude the Parties from offering Sensitive  
19             Personal Information into evidence at any proceeding in this action  
20             subject to the restrictions of Federal Rule of Civil Procedure 5.2.

21       8.     Notwithstanding any other provision contained herein, this Protective  
22             Order shall not limit or otherwise abrogate the ability and authority of  
23             Plaintiff Securities and Exchange Commission ("SEC") to: (1) use,  
24             disclose, or retain any materials to the extent required by law; and/or (2)  
25             use or disclose any materials in a manner consistent with paragraphs 1-  
26             22 of Section H of SEC Form 1662 (the "Routine Uses of Information"),  
27             a copy of which is attached hereto as Exhibit A.  
28

1 STIPULATED BY:

2  
3 Dated: August 7, 2019

SECURITIES AND EXCHANGE  
COMMISSION

4  
5 By: /s/ Kenneth Donnelly  
Kenneth Donnelly  
Derek S. Bentsen  
6 Attorneys for Plaintiff  
7 SECURITIES AND EXCHANGE  
COMMISSION

8  
9 Dated: August 7, 2019

GARTENBERG GELFAND  
HAYTON LLP

10  
11 By: /s/ Milena Dolukhanvan  
Edward Gartenberg  
Milena Dolukhanyan  
12 Attorneys for Defendant  
13 SAIVIAN LLC

14 Dated: August 7, 2019

GARTENBERG GELFAND  
HAYTON LLP

15  
16 By: /s/ Milena Dolukhanvan  
Edward Gartenberg  
17 Milena Dolukhanyan

18  
19 SCHULTE ROTH & ZABEL LLP  
Howard Schiffman  
20 Brian T. Kohn  
Robert E. Griffin  
21 Attorneys for Defendants  
Entity Defendants and  
22 Eric J. "EJ" Dalius Edward

23  
24 SO ORDERED:

25 Date: 8/7/19

26   
HON. ~~CORMAC J. CARNEY~~ Charles F. Eick  
27 UNITED STATES DISTRICT JUDGE  
Magistrate Judge  
28

# **EXHIBIT A**

**SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**Supplemental Information for Persons Requested to Supply  
Information Voluntarily or Directed to Supply Information  
Pursuant to a Commission Subpoena**

**A. False Statements and Documents**

Section 1001 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

Section 1519 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States . . . , or in relation to or contemplation of any such matter.

**B. Testimony**

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.
2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony if, during the testimony, you desire to be accompanied, represented and advised by counsel. Your testimony will be adjourned once to afford you the opportunity to arrange to be so accompanied, represented or advised.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides that fines and terms of imprisonment may be imposed upon:

Whoever--

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify

truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true.

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

#### **C. Submissions and Settlements**

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

Persons who become involved in . . . investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Director with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

#### **D. Freedom of Information Act**

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self-addressed envelope.



#### **E. Authority for Solicitation of Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

*Persons Requested to Supply Information Voluntarily.* One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

#### **F. Effect of Not Supplying Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, Section 21(c) of the Securities Exchange Act of 1934, Section 42(c) of the Investment Company Act of 1940, and Section 209(c) of the Investment Advisers Act of 1940 provide that fines and terms of imprisonment may be imposed upon any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena.

*Persons Requested to Supply Information Voluntarily.* There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

#### **G. Principal Uses of Information**

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

#### **H. Routine Uses of Information**

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.
3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.
4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.
5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).
7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.
8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.
9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.
11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.
12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.
13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).
15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.
16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.
17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.
18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.
19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.
20. To respond to subpoenas in any litigation or other proceeding.
21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

\* \* \* \* \*

*Small Business Owners:* The SEC always welcomes comments on how it can better assist small businesses. If you would like more information, or have questions or comments about federal securities regulations as they affect small businesses, please contact the Office of Small Business Policy, in the SEC's Division of Corporation Finance, at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at <http://www.sba.gov/ombudsman> or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.